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**From:**

**Sent:** Tuesday, May 17, 2011 8:50:03 AM

**To:**

**Cc:**

**Subject:** FW: Re-Examination Question

Conducting an examination of the taxpayer regarding the payments totaling over \$ does not constitute a prohibited second examination as to year under section 7605(b), because the actions taken with respect to the SFR assessment do not constitute an examination. As such, there would be no prohibition under section 7605(b) because the examination of the payments would be the first examination of the taxpayer for .

Section 7602(a) empowers the Service to examine "any books, papers, records, or other data" which may be relevant for four specific purposes, one of them being the making of a return where none has been made. Section 7605(b) prohibits "unnecessary examination[s]" and more than one inspection of a taxpayer's books of account for the same taxable period unless necessary and pursuant to certain procedures. Although the Code does not define "examination", nor are we aware of any meaningful official agency or judicial definition, we believe it necessarily involves the Service examining a taxpayer's "books, papers, records, or other data." The Service's determination of a liability made without examining books and records (or the like) is not an examination.

Revenue Procedure 2005-32, 2005 WL 1189673, provides agency guidance on what does not constitute an examination. Preparing a missing return from records or information items that are already in the Service's possession is not an examination, inspection or reopening. Rev. Proc. 2005-32, sec. 4.03(1)(b). Because the ASFR program does not and would not involve an examination of a taxpayer's books and records other than potentially a very limited review of supporting records that a taxpayer voluntarily submits in response to a discrepancy or similar inquiry, operation of the program is not an examination for purposes of section 7602(a) and 7605(b). Even a review of voluntarily submitted records in these circumstances--assuming it's a relatively simple review--does not rise to the level of an examination. See Rev. Proc. 2005-32, sec. 4.03(1)(c).

Please do not hesitate to contact me with any questions or concerns.